IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17804 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARILAL CHHOTALAL CHUDASAMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17804 of 2003

MR BD KARIA for Petitioner No. 1

MS MITA PANCHAL AGP for Respondent No. 1,3

MR PREMAL R JOSHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 08/09/2004

ORAL JUDGEMENT

Leave to amend the cause title by substituting Junagadh Municipal Corporation for Junagadh Municipality, (Notice to be served through the Municipal Commissioner, Junagadh Municipal Corporation), Junagadh.

Rule to the substituted party - Junagadh Municipal Corporation. Mr Premal Joshi waives service of Rule for Junagadh Municipal Corporation.

2. In this petition under Article 226 of the Constitution, the petitioner has prayed that the petitioner be made a permanent workman as Lineman under the respondent-Corporation from the date of his initial appointment i.e. from 14.6.1978 or from the date on which the petitioner's juniors were made permanent and the respondent-Municipal Corporation may also be directed to pay the petitioner difference of salary.

3. It appears that the present petitioner was one of the petitioners in Special Civil Application No.8108 of 1990 which was filed by seven petitioners for getting permanency benefits from the then Junagadh Municipality. During pendency of that petition, all except the present petitioner came to be made permanent by order dated 10.8.1990 as stated in paragraph 3 of the judgment dated 19.10.2000 by which the above petition came to be disposed of with an observation that petitioner No.3 therein (i.e. the present petitioner) shall be at liberty to make representation to the Municipality. The petitioner accordingly made a representation and by Resolution No.276 dated 10.6.2002 the Municipality resolved to give the petitioner permanency benefits from 1.1.1997. However, that resolution was not being implemented and, therefore, the petitioner filed Special Civil Application No.10684 of 2002. During pendency of that petition, in place of Junagadh Municipality, Junagadh Municipal Corporation came to be constituted and the Municipal Commissioner passed order dated 2.4.2003 granting the petitioner permanency benefits w.e.f. 2.4.2003. That petition thereupon came to be disposed of by order dated 19.8.2003 permitting the petitioner to make a representation to give the petitioner benefits by giving him the deemed date of regular appointment at par with his juniors. The petitioner accordingly made representation dated 8.9.2003 (Annexure "E") requesting the Municipal Commissioner to give the petitioner the same benefits which are already given to the petitioner's juniors. Since the respondents have not given reply, the petitioner has approached this Court.

4. Mr Karia for the petitioner submits that the petitioner had approached this Court as far back as in the year 1990 for getting the benefits of permanency/ regular appointment and salary and allowances on that basis, but for the reasons best known to the concerned authorities, except the petitioner, all other petitioners

in that petition were given the permanency benefit by order dated 10.8.1990 and, therefore, while disposing of the petition on 19.10.2000 (Annexure "A"), this Court had directed the Municipality to consider the petitioner's case in light of the order passed in the case of six other petitioners. However, without giving any reason, the respondents continued to make discrimination against the petitioner and, therefore, the respondents may be directed to give the petitioner permanency benefits and all consequential benefits as given to the petitioner's juniors and other similarly situate persons as per the order dated 10.8.1990.

5. On the other hand, Mr Premal Joshi, learned counsel for respondent No.2 states that the facts stated in the petition are not disputed, but Junagadh Municipal Corporation is having financial difficulties and, therefore, it is not possible to give the petitioner all the benefits which he is praying for.

6. Having heard the learned counsel for the parties, it appears to the Court that when the petitioner was appointed on 14.6.1978 and persons appointed after the petitioner or similarly situate persons were given the benefit of regular appointment as per the order dated 10.8.1990 and when no justification is given for giving discriminatory treatment to the petitioner, the petition will have to be allowed.

7. Accordingly, the petition is allowed and the respondents are directed to give the petitioner the same benefits which are given to the persons junior to the petitioner or similarly situate persons under the Junagadh Municipal Corporation.

Even if the respondent-Corporation is in financial difficulties as urged by the respondents, the respondents will have to give the petitioner all the benefits under this judgment within reasonable time and, therefore, the respondents are directed to compute the benefits payable to the petitioner under this judgment within one month from the date of receipt of writ of this Court or a certified copy of this judgment, whichever is earlier, and to pay the amount in four equal monthly installments, the first installment shall be paid by 30th October 2004 and the subsequent installments shall be paid at the end of each subsequent month.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. SHAH, J.)

zgs/-